Supreme Court, U. S.
FILED
JAN 26 1980
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO. 79-1158

JOSEPH RICCO

Defendant-Appellant

vs.

STATE OF OHIO

Plaintiff-Appellee

ON APPEAL FROM
THE COURT OF APPEALS FOR
THE EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY, OHIO AND FROM
THE SUPREME COURT OF OHIO

JURISDICTIONAL STATEMENT

BERNARD A. BERKMAN
BERKMAN, GORDON, LEVY, MURRAY
AND PALDA
2121 THE ILLUMINATING BUILDING
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 781-5245
Attorney for Defendant-Appellant

BROWNPRINT INC. — LEGAL DIVISION, CLEVELAND, OHIO (216) 621-2944

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

JOSEPH RICCO

Defendant-Appellant

-vs-

STATE OF OHIO

Plaintiff-Appellee

JURISDICTIONAL STATEMENT

Defendant-appellant (hereinafter sometimes called "defendant" or "appellant") appeals from the judgment of the Court of Appeals of Cuyahoga County, Eighth Appellate District, State of Ohio, entered February 18, 1979, reversing the judgment of the Municipal Court of the City of Cleveland, State of Ohio, which had ordered the dismissal of the prosecution which is the subject of this appeal. On September 7, 1979, the Supreme Court of Ohio overruled appellant's motion for an order directing the Court of Appeals to certify its record. At the same time, the Supreme Court of Ohio also entered an order dismissing appellant's appeal of the order of the Court of Appeals described above, for lack of a substantial constitutional question. The latter order is a decision on the merits which is

appealable to this Court, Tumey v. Ohio, 273 U.S. 510, 515 (1927), and is also appealed herein by the appellant. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINIONS BELOW

The orders and opinions below are not reported. They are set out in the appendix, infra, pages 1a-8a.

JURISDICTION

This appeal arises from a prosecution of the appellant in the Cleveland Municipal Court for pandering obscenity in violation of Ohio Revised Code Section 2907.32(A)(4). On March 21, 1977, the trial court granted appellant's motion to dismiss the prosecution on the ground that Ohio Revised Code Section 2907.35(C), which exempts motion picture projectionists from prosecution under the Ohio obscenity statutes, violates the equal protection clause of the Fourteenth Amendment of the United States Constitution as to bookstore clerks and cashiers, including this appellant. On February 8, 1979, the Court of Appeals for the Eighth Appellate District, Cuyahoga County, Ohio, reversed the decision of the trial court and remanded the case for further proceedings. On September 7, 1979, the Supreme Court of Ohio declined plenary review of this case, simultaneously overruling appellant's motion to certify the record and dismissing appellant's appeal for lack of a substantial constitutional question.

This being a final judgment of the highest court of Ohio in which a decision could be had in a case where is drawn in question the validity of a statute of the State of Ohio on the ground of its being repugnant to the Constitution of the United States and the decision being in favor of its validity, jurisdiction of this appeal is conferred by 28 U.S.C. §1257(2).

Notice of Appeal was filed in the Supreme Court of Ohio on December 4, 1979 (App. pp. 9a-10a), and in the Court of Appeals and in the Cleveland Municipal Court on December 5, 1979 (App. 11a-12a). By order issued by Justice Stewart on November 29, 1979, the time for docketing this appeal was extended to February 4, 1980.

STATUTES INVOLVED

Section 2907.32 of the Ohio Revised Code (pandering obscenity offense) and Section 2907.35(C) (projectionist immunity) are set forth in the appendix at pages 13a-16a, infra.

QUESTION PRESENTED

Do the Ohio statutes which grant an examption from prosecution under the obscenity laws for motion picture projectionists who have neither a financial stake in their place of employment nor any managerial responsibility for its operation, but which permit such prosecution of bookstore clerks and cashiers who have neither a financial stake in their place of employment nor any managerial responsibility, violate the right of such bookstore clerks and cashiers to equal protection of the law as guaranteed by the Fourteenth Amendment of the United States Constitution?

STATEMENT OF THE CASE

On December 6, 1976, appellant was arrested and charged in the Cleveland Municipal Court with pandering obscenity in violation of Ohio Revised Code §2907.32(A)(4).

On December 28, 1976, defendant filed a motion to dismiss the complaint, urging inter alia, that his prosecution under the obscenity statutes denied him equal protection of the law, in contravention of the Fourteenth Amendment of the United States Constitution. On March 21, 1977, the motion to dismiss was granted on this ground. The prosecution moved for leave to appeal to the Court of Appeals for the Eighth Appellate District (Cuyahoga County). That motion was granted, and on February 8, 1979, the Court of Appeals announced its decision reversing the decision of the trial court and remanding the case for further proceedings. On September 7, 1979, the Supreme Court of Ohio upheld the decision of the Court of Appeals by entering the orders described above, denying appellant's motion to certify the record and dismissing his appeal.

The equal protection argument asserted by the defendant and accepted by the trial court was that as a clerk or cashier in the bookstore where he was arrested, the defendant was similarly situated to projectionists who are exempted from prosecution by Revised Code Section 2907.35(C); and that, therefore, the obscenity offense established in Section 2907.32 of the Revised Code arbitrarily discriminates against bookstore clerks and cashiers.

THE QUESTIONS ARE SUBSTANTIAL

The Ohio statutory scheme permits prosecution of nonmanagerial employees of bookstores under the obscenity laws, while immunizing similar employees of motion picture theaters who happen to be projectionists. The Court of Appeals of Cuyahoga County, Ohio, has already recognized that this classification bears no rational relation to the furtherance of a legitimate state interest and therefore violates the equal protection clause of the Fourteenth Amendment. State v. Burgun, 49 Ohio App. 2d 112, 124-126 (1976). The reasoning of the Court of Appeals is contained in the following paragraph:

> "R.C. 2907.35(C) in effect creates a special defense for non-managerial employees who happen to be projectionists. All other non-managerial employees may not use this defense. The only real difference between the two classes of employees is that one class is composed of projectionists and the other class is composed of non-projectionists. Such a distinction will not support R.C. 2907.35(C) in the face of an equal protection challenge. The legitimate state interest that is furthered by the prohibition on pandering obscenity is the curtailment of the trafficking in obscene materials for commercial gain. That goal could not possibly be furthered by protecting projectionists from prosecution while leaving all other employees

liable to prosecution. If the legislature wished to exempt from the scope of R.C. 2907.32 all those who were not profiting from the sale of obscene materials other than by earning wages, then it should have exempted all non-managerial employees who do not have a financial interest in the business. In light of the statutory scheme employed to prevent the pandering of obscenity there is no rational basis which would justify the legislature in protecting projectionists from criminal prosecutions for pandering obscenity while leaving exposed to prosecution all other similarly situated employees. R.C. 2907.35(C) creates a classification which bears no rational relation to the furtherance of a legitimate state interest; therefore, it violates the Equal Protection Clause." 49 Ohio App. 2d at 124-26, 359 N.E.2d at 1026-27.

This reasoning of the Court of Appeals echoes a similar conclusion of Maryland's highest court in Wheeler v. State, 281 Md. 593, 380 A.2d 1052 (1977), which struck down Maryland's comparable exemption for motion picture theater employees. The Court of Appeals of Maryland considered a variety of factual arguments presented by the government in furtherance of the validity of the classification. It rejected the notion that the degree to which the obscene matter is handled by the employees differs significantly as between bookstores and theaters. 380 A.2d at 1059. It

rejected the difference in the distribution pattern of films and books as a justification for the classification. Id. It concluded that, while there is a distinction between obscene motion pictures and other obscene matter, this Court has permitted a greater degree of regulation of films than of books. Id. at 1060, citing Miller v. California, 413 U.S. 15, 26, n. 8 (1973).

> "[A] classification based upon control of obscene films and pictures more lenient than those imposed on other obscene matter certainly could not serve as a rational basis for that classification in light of the governmental objective." Id.

The Supreme Court of Ohio has not decided the issue of the equal protection validity of the projectionist immunity statute, Ohio Revised Code Section 2907.35(C). In State v. Burgun, 56 Ohio St. 354 (1978), the Supreme Court considered and reviewed four obscenity convictions in which the equal protection argument at issue here was raised. However, the Court declined to reach the merits of the equal protection issue because it concluded that the convictions were not erroneous in view of the fact that the defendants had not established their status as non-managerial clerks or cashiers.

In the case at bar, the trial court was satisfied the defendant had brought himself within the classification effected by the exemption of the projectionists. Moreover, the defendant's claim to the status was uncontroverted. To require the

defendant to go further and offer testimony as to his status as a non-managerial clerk or cashier would be to force him to abandon his constitutional privilege against self-incrimination in order to assert his equal protection rights. The exercise of the privilege against self-incrimination cannot be penalized in this manner. Cf. Marchetti v. United States, 390 U.S. 39 (1968); and Leary v. United States, 395 U.S. 6 (1969).

The Court of Appeals of Cuyahoga County, while determining that the projectionist exemption violated equal protection precepts, declined to strike down Section 2907.32 as applied to bookstores and cashiers. Instead, it purported to strike down the projectionist immunity contained in Section 2907.35(C), itself. State v. Burgun, 49 Ohio App. 2d 112 (Cuyahoga 1976). The Supreme Court of Ohio has not so ruled, and under Ohio law the decision of the Court of Appeals on this point is plainly erroneous inasmuch as the Ohio Supreme Court has held that a statute cannot be declared partially invalid when the result would be to extend its operation beyond that which the legislature contemplated. See Board of Health v. Greenville, 86 Ohio St. 1, 36 (1912); State ex rel. English v. Industrial Commission of Ohio, 160 Ohio St. 215 (1953) (separate opinion of Taft, J.).1/ The net effect of striking down

1/ In Wheeler v. State, 281 Md. 593, 380 A. 2d 1052 (1977), applying reasoning similar to that set forth above, the Maryland court of appeals refused to strike down the Maryland motion picture theater employees exception and instead ruled that the underlying obscenity statute violates equal protection rights.

the statutory exemption for motion picture projectionists would be to create judicially the crime of operating a motion picture projector in the exhibition of an obscene film. This result would violate the prohibition of the creation of common law crimes as set forth in Ohio Revised Code Section 2901.03.

The fact remains that when the appellant in the case at bar was arrested while performing his duties as a bookstore clerk in the state of Ohio, a motion picture projectionist similarly engaged in the dissemination of obscene material could not have been prosecuted.

Even under the "relatively relaxed" rational basis standard, Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 314 (1976), this Court has required some "acceptable rationale" or "reasonable basis" for a legislative classification. See Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 491 (1972). And where a classification has impinged on important personal interests which have not been recognized as fundamental rights calling for technically strict scrutiny, it has been suggested that this Court will nevertheless closely examine the relationship between the classification and the legislative purpose. See Gunther, Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. L. Rev. (1972); Nowak, Rotunda and Young, Constitutional Law 526 (1978); see Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 319-20 (1976) (Marshall, J. dissenting); Foley v. Connelie, 435 U.S. 291 (1978) ("close" but not

"strict" scrutiny of alien age classifications). Arguably, strick scrutiny should apply to this case because whether or not obscenity is protected speech, the prosecution of bookstore clerks and cashiers who have no control over the merchandise stocked in their places of employment has an obvious chilling effect upon First Amendment values. Legislative classifications which implicate First Amendment rights are among those which give rise to a requirement of strict scrutiny. See Williams v. Rhodes, 393 U.S. 23, 30 (1968).

Irrespective of whether the scrutiny applied to the legislative classification involved in this case is "strict," "close," or merely "relaxed," the projectionist exemption renders Ohio's obscenity statutes invidiously discriminatory. Wheeler v. State, 281 Md. 593, 380 A.2d 1052 (1977), found the comparable Maryland statute invalid under the rational basis test. No legislative purpose (other than, perhaps, the intent to favor a particular special interest group) is discernible here.

The discriminatory Ohio scheme of prosecuting the lowest echelon employees of bookstores while exempting motion picture projectionists who are in all significant respects similarly situated is wholly arbitrary, fundamentally unfair, and can only be remedied by invalidation of the prohibition against pandering obscenity contained in Ohio Revised Code Section 2907.32. This flagrant violation of the equal protection clause of the Fourteenth Amendment requires plenary review by this Court.

CONCLUSION

For the foregoing reasons, appellant respectfully urges the Court to note jurisdiction and grant plenary review of this appeal.

Respectfully submitted,

BERNARD A. BERKMAN
BERKMAN, GORDON, LEVY, MURRAY
and PALDA

Attorney for Defendant-Appellant

APPENDIX

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO) 1979 Term
City of Columbus) To wit: September 7, 1979

State of Ohio,	)	No. 79-512
	)	
Appellee,	)	MOTION FOR AN ORDER
	)	DIRECTING THE
vs.	)	COURT OF APPEALS
	)	
Joseph Ricco,	)	For Cuyahoga County
	)	
Appellant.	)	TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Berkman, Gordon, Kancelbaum, Levy and Murray.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ___ day of _____, 19__.

_____ Clerk

_____ Deputy

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

NO. 37824

STATE OF OHIO,	)	APPEAL FROM
CITY OF CLEVELAND	)	CLEVELAND
	)	MUNICIPAL COURT
APPELLANT	)	
	)	No. 76 CRB 30342
-vs-	)	
	)	JOURNAL ENTRY
JOSEPH RICCO	)	AND OPINION
	)	
APPELLEE	)	

DATE Feb. 8, 1979

KRENZLER, J.:

This cause came on to be heard upon the pleading and the transcript of the evidence and record in the Cleveland Municipal Court, and was argued by counsel; on consideration whereof, the court certifies that in its opinion substantial justice has not been done the party complaining, as shown by the record of the proceedings and judgment under review, and judgment of said Cleveland Municipal Court is reversed. Each assignment of error was reviewed by the court and upon review the following disposition made:

On December 6, 1976, Joseph Ricco, the defendant-appellee, hereinafter referred to as the appellee, was arrested and charged with violation of R.C. 2907.32(A)(4), the statute governing pandering of obscenity. On December 28, 1976, the appellee, stating that he was a

cashier, filed a pre-trial motion to dismiss the complaint in the Cleveland Municipal Court. The motion was based on four grounds: 1) that the complaint failed to allege all the material elements of the offense charged; 2) that the statute upon which the charges were based was unconstitutionally overbroad; 3) that the statute was unconstitutionally vague; and 4) that the appellee was denied equal protection of the laws.

On March 21, 1977, the trial court granted the appellee's motion to dismiss. The following entry was placed on the docket:

> "Motion to dismiss granted. Defendant denied equal protection of the laws."

The thrust of the appellee's argument on the equal protection ground in his motion to dismiss was that the entire statute governing the pandering of obscenity, R.C. 2907.32, was rendered invalid when this court declared a related section, R.C. 2907.35(C), to be an unconstitutional violation of equal protection. See State v. Dalene Burgun, (1976), 49 Ohio App. 2d 112 (Burgun I).1/

Section 2907.35(C) of the Revised Code provides:

> (C) Sections 2907.31 and 2907.32 of the Revised Code do not apply

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1/ Our decision in this case was not appealed to the Ohio Supreme Court.

> to a motion picture operator or projectionist acting within the scope of his employment as an employee of the owner or manager of a theatre or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in his place of employment, other than wages.

In Burgun (I), supra, we ruled that although the qualified exemption for projectionists contained in R.C. 2907.35(C) was invalid, the basic provisions governing the pandering of obscenity in R.C. 2907.32 were "still valid and of full force and effect." 49 Ohio App. 2d at 127. The effect of our decision in Burgun (I) then was to strike out an exception to the pandering statute, but to leave the statute itself unimpaired.

On May 9, 1977, we granted leave to the appellant, the State of Ohio, to appeal the judgment of the court below granting the appellee's motion to dismiss.

It is clear that the trial court's dismissal of this case was directly contrary to our ruling in Burgun (I), that R.C. 2907.32 is still valid and of full force and effect, despite our invalidation of the projectionist exception contained in R.C. 2907.35(C). We have previously held that the prosecution of a cashier under R.C. 2907.32 was not in violation of the equal protection clause. State v. Dalene Burgun, supra (Burgun I); State v. Ronald Burgun (Cuy. Cty., Aug. 18, 1977), No. 36078 (Burgun II); State v. Bayless (Cuy. Cty., July 21, 1977), No. 36264; State v. Krute (Cuy. Cty., Aug. 4, 1977),

No. 36092; State v. Turoso (Cuy. Cty., July 14, 1977), No. 36368.

In State v. Burgun (1978), 56 Ohio St. 2d 354 (Burgun II), the Ohio Supreme Court reviewed our decision in Burgun (II), State v. Bayless, supra; State v. Turoso, supra; and State v. Krute, supra, and upheld the constitutionality of the pandering obscenity statute, R.C. 2907.32, "when it is authoritatively construed to incorporate the guidelines prescribed in Miller v. California, 413 U.S. 15."2/ In its Burgun (II) decision, the Supreme Court did not reach the question of whether the qualified projectionist exemption contained in R.C. 2907.35(C) violates the equal protection clause of the Fourteenth Amendment. Nor did the court address the question of whether invalidation of the qualified exemption would render the basic obscenity pandering statute invalid. The court held that "a person who is seeking to raise the issue of the validity of a discriminatory enactment has no standing for that purpose unless he belongs to a class which is prejudiced by the statute. Witham v. South Side Bldg. & L. Assoc. (1938), 133 Ohio St. 560; Anderson v. Brown (1968), 13 Ohio St.

2/ The Supreme Court reversed our decision in State v. Ronald Burgun, supra, (Burgun II), on the ground that the trial court had failed to instruct the jury on the definition of obscenity established in Miller v. California, supra. State v. Ronald Burgun (1978), 56 Ohio St. 2d 354 (Burgun II). The court affirmed our decisions in State v. Bayless, supra; State v. Krute, supra; and State v. Turoso, supra.

53." Id. at 365. The court noted that "none of the appellants offered proof at the trial court level to show that they were in a position similar to that of the projectionists." Thus there was "insufficient probative evidence in the record to establish that a proper person has brought himself within the class of persons standing in the same position as the statutorily exempted projectionists." Id. Accordingly, the Supreme Court rejected the appellants' equal protection argument.

In Burgun (II), supra, the appellants were all cashiers and clerks in a position similar to the appellee in the case at bar. In the case at bar, as in Burgun (II), no evidence has been presented to demonstrate that the appellee is within the class prejudiced by the statute.

In the absence of a contrary ruling by the Ohio Supreme Court, we reaffirm our decision in Burgun (I), supra, that our invalidation of the qualified projectionist exemption contained in R.C. 2907.35(C) on equal protection grounds does not invalidate the basic obscenity pandering statute, R.C. 2907.32. We also note that the appellee in the instant case has not presented evidence which would place him within a class prejudiced by the statute. See State v. Ronald Burgun, (1978), 56 Ohio St. 2d 354. Accordingly, the court below was in error in discharging the appellee based on his equal protection argument, and the appellant's assignment of error is well taken.

The decision of the court below is reversed and the case remanded for further proceedings consistent with this opinion.

This cause is remanded to the Cleveland Municipal Court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant(s) recover of said appellee(s) its costs herein.

It is ordered that a special mandate be sent to said Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

PARRINO, P.J.,
PRYATEL, J., CONCUR

/s/ Alvin I. Krenzler
Judge
ALVIN I. KRENZLER

Appearances:

For Plaintiff-Appellant: Almeta Johnson

For Defendant-Appellee: Bernard Berkman

(Filed December 4, 1979)

IN THE SUPREME COURT OF THE STATE OF OHIO

STATE OF OHIO	)	
	)	
Plaintiff-Appellee	)	CASE NO. 79-512
	)	
-vs-	)	
	)	
JOSEPH RICCO	)	NOTICE OF APPEAL
	)	
Defendant-Appellant	)	

Defendant-appellant Joseph Ricco hereby gives notice of his appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Ohio entered on September 7, 1979, dismissing defendant-appellant's appeal herein for lack of a substantial constitutional question, and overruling defendant-appellant's motion for an order directing the Court of Appeals for the Eighth Appellate District, Cuyahoga County, Ohio, to certify its record herein.

This defendant-appellant further gives notice of his appeal to the Supreme Court of the United States from the judgment of the Court of Appeals for the Eighth Appellate District, Cuyahoga County, Ohio, entered February 18, 1979, reversing the judgment of the Municipal Court of the City of Cleveland, State of Ohio, in favor of the defendant-appellant Joseph Ricco.

This appeal is taken under 28 U.S.C. Section 1257(2).

/s/ Bernard A. Berkman
BERNARD A. BERKMAN
BERKMAN, GORDON, KANCELBAUM,
LEVY and MURRAY
2121 The Illuminating Bulding
55 Public Square
Cleveland, Ohio 44113
(216) 781-5245

Attorney for Defendant-Appellant

(Filed December 5, 1979, in the Court of Appeals and in Cleveland Municipal Court)

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

STATE OF OHIO	)	
	)	
Plaintiff-Appellee	)	CASE NO. 37824
	)	
-vs-	)	
	)	
JOSEPH RICCO	)	NOTICE OF APPEAL
	)	
Defendant-Appellant	)	

Defendant-appellant Joseph Ricco hereby gives notice of his appeal to the Supreme Court of the United States from the judgment of the Court of Appeals of Cuyahoga County, Eighth Appellate District, State of Ohio, entered February 18, 1979, reversing the judgment of the Municipal Court of the City of Cleveland, State of Ohio, in favor of the defendant-appellant Joseph Ricco.

On September 7, 1979, the Supreme Court of the State of Ohio, in case No. 79-512, dismissed defendant-appellant Joseph Ricco's timely-filed appeal herein for lack of a substantial constitutional question and on the same day overruled defendant-appellant Joseph Ricco's timely-filed motion for an order directing this Court to certify its record herein. Notice is hereby given that defendant-appellant Joseph Ricco also appeals the aforesaid judgments of the Supreme Court of Ohio.

This appeal is taken under 28 U.S.C. Section 1257(2).

/s/ Bernard A. Berkman
BERNARD A. BERKMAN
BERKMAN, GORDON, KANCELBAUM,
LEVY and MURRAY
2121 The Illuminating Building
55 Public Square
Cleveland, Ohio 44113
(216) 781-5245

Attorney for Defendant-Appellant

OHIO REVISED CODE §2907.32

Pandering obscenity.

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, reproduce, or publish any obscene material, when the offender knows that such material is to be used for commercial exploitation or will be publicly disseminated or displayed, or when he is reckless in that regard;

(2) Exhibit or advertise for sale or dissemination, or sell or publicly disseminate or display any obscene material;

(3) Create, direct, or produce an obscene performance, when the offender knows that it is to be used for commercial exploitation or will be publicly presented, or when he is reckless in that regard;

(4) Advertise an obscene performance for presentation, or present or participate in presenting an obscene performance, when such performance is presented publicly, or when admission is charged;

(5) Possess or control any obscene material with purpose to violate division (A)(2) or (4) of this section.

(B) It is an affirmative defense to a charge under this section, that the material or performance involved was disseminated or presented for a bona fide medical, sicentific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in such material or performance.

(C) Whoever violates this section is guilty of pandering obscenity, a misdemeanor of the first degree. If the offender has previously been convicted of a violation of this section or of section 2907.31 of the Revised Code, then pandering obscenity is a felony of the fourth degree.

OHIO REVISED CODE §2907.35

Presumptions; notice.

(A) An owner or manager, or his agent or employee, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling materials or exhibiting performances, who, in the course of business:

(1) Possesses five or more identical or substantially similar obscene articles, having knowledge of their character, is presumed to possess them in violation of division (A)(5) of section 2907.32 of the Revised Code;

(2) Does any of the acts prohibited by section 2907.31 or 2907.32 of the Revised Code, is presumed to have knowledge of the character of the material or performance involved, if he has actual notice of the nature of such material or performance, whether or not he has precise knowledge of its contents.

(B) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the jurisdiction in which the person to whom the notice is directed does business. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(C) Sections 2907.31 and 2907.32 of the Revised Code do not apply to a motion picture operator or projectionist acting within the scope of his employment as an employee of the owner or manager of a

theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in his place of employment, other than wages.